**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION**
**311 West Washington Street**
**Indianapolis, Indiana 46204**

**STATE OF INDIANA )**
**) SS**
**COUNTY OF MARION )**

**LOIS A. WILLIAMS,**
**Complainant,**

**DOCKET NO. 05290**

**vs.**

**MIDWEST STEEL DIVISION,**
**NATIONAL STEEL CORPORATION,**
**Respondent.**

## FINDINGS OF FACT AND CONCUSIONS OF LAW AND ORDER

Mr. Hugo E. Martz was appointed Hearing Officer pursuant to IC 22-9-1-6(j) (2) and pursuant to IC 4-22-1-12 and Ind. Admin. R. and Reg. §(22-9-1-6)-35(B), entered his Recommended Findings of Fact, Conclusions of Law, and Order on February 17, 1977.

Complainant, by counsel, and Respondent, by counsel timely filed their objections pursuant to IC 4-22-1-12 and Ind. Admin. R., and Reg. §(22-9-1-6)-35(B) and this Commission held its hearing thereon on May 19, 1977.

Having duly considered the arguments of counsel, both oral and by brief, the recommendation of the Hearing Officer, and the record in this case, the Commission hereby adopts the following Findings of Fact, Conclusions of Law, and Order.

## FINDING OF FACT

1. Complainant Lois A. Williams (hereinafter called Williams), filed this action with the Indiana Civil Rights Commission, under the Indiana Civil Rights Law, IC,

1971, 22-9-1-1, *et seq.,* on February 5, 1974. The hearing in this matter was held during five days, March 26, April 22, 23, May 11, 12, 1976.

2. Williams is a white female person; she is approximately five feet, six inches (5'6") tall and during her active employment with respondent in 1972 and 1973 she was approximately thirty-five (35) years of age and weighed one hundred thirty (130) pounds.

3. Respondent, Midwest Steel division, National Steel Corporation *hereinafter called Midwest); is a finishing mill where rolled steel is "pickled" and reduced for the manufacture of tin cans. Its facility is located off U.S. Highway 12, Portage, Indiana.

4. During the times in question Midwest had approximately one thousand nine hundred (1,900) employees, about one thousand two hundred (1,200) or one thousand three hundred (1,300) hourly employees.

5. The following facts were determined by stipulation of the parties:

   a. On December 18, 1972, Williams began her employment a an Electrolytic Tinning Line (hereinafter E.T.L.) laborer (Class 2);

   b. On January 2, 1973, Williams took the position of Stocker of the Chrome and Tin Line under the supervision of General Foreman Louis (Bud) Miller (Class 8);

   c. On February 7, 1973 the Stocker's job was discontinued or eliminated by the company and Williams was returned to the laborer's job (Class 2);

   d. On February 8, 1973, Williams "pulled" (withdrew) her waiver which she had previously signed waiving other jobs above Stocker;

   e. On February 12, 1973, Williams became a Feeder-Helper on the line (Class 5);

f. On March 15, 1973, Williams was removed from job of Feeder-helper and returned to laborer (Williams claims because of sex discrimination, Midwest claims because she was not physically able to perform the job and because of an injury to the Feeder, Raymond Ramirez, with whom she had been working.

g. On May 14, 1973, Williams commenced Crane Operator's Training (Crane Operator is Class 8, Williams continued to receive laborer's pay during said training).

h. On June 8, 1973, Williams took the Crane Operator's exam and failed; she was returned to the laborer's job;

i. On July 23, 1973, Williams took a sick leave which lasted until November 12, 1973, during which time she received employer provided sick pay benefits;

j. On November 8, 1973, she was examined by the company physician, Dr. Lynn Tedrick, to determine if she could return to work (Williams had had surgery on both feet in September, 1973 and part of his examination included her feet);

k. On Monday, November 12, 1973, Williams returned to work as an E.T.L. laborer;

1. On Friday November 16, 1973, after her work shift, at approximately four o'clock (4:00 pm), Williams proceeded from her work shift area to the Personnel Office in another building where she talked to Edward Lewis, Supervisor of Employment and Placement, who later died in December, 1974; Williams talked to Lewis for approximately twenty (20) minutes and thereafter left her employment with Midwest and has not worked there since (Williams contends that she was "forced to quit" because Lewis would not grant another sick leave; the Midwest contends she outright quit).

2. On or about March 12, 1973, Williams filed an Application for Transfer to the Metallurgical and Inspection Department for the job of Tester. This was rejected on the basis that she did not have enough service.

3. At various times Williams attempted to train as a Tractor-Driver, servicing the E.T.L. A Tractor-Driver is required to drive two sizes of tractors, a rather small tractor with a five thousand (5,000) pound load limit and a very large tractor. Williams contends that she was not allowed to drive the large one; Midwest claims she was afraid of it and expressed such fear.

4. In 1973 thirteen (13) persons were trained and tested for the job of Crane Operator on the E.T.L. crane, eleven (11) males and two (2) females, who were Williams and another female, Marie Evans. Seven (7) males passed on their first test. Williams, Evans, and four (4) males failed. All four (4) males who failed received additional training and later passed the test. After the training Evans did not wish to become a Crane Operator and either intentionally failed the test or voluntarily withdrew.

5. There are two parts to the Crane Operator's test: (1) knowledge of safety rules and operating procedures, ad (2) operational or proficiency test. Williams received a score of forty-eight (48) on the safety portion of her test. The minimum passing safety score was fifty (50). Williams was higher than three (3) other males who scored respectively fourteen (14), thirty-seven (37), and forty-two (42), all of whom later passed J. Broton Male who received a score of fourteen (14) failed the test on February 3, 1973, was retested the following week, passed the test and became a Crane Operator. T. Boyd, male, who failed the test on February 2, 1973, was retested the following week, passed the test and became a Crane Operator. D. Nickles, male, failed the test on February 4, 1973, was retested the following week, passed the test and became a Crane Operator.

6. According to her examiner, George Paulsen, Williams failed the operational or proficiency portion of her test because she had too much swing in her hooks and had difficulty in coupling and uncoupling her hooks to the coil. (Record 793-4).

7. On the average, a Crane Operator is given approximately two (2) weeks or eighty (80) hours of training. Williams had approximately three (3) weeks or one hundred twenty (120) hours of training. Training consists of riding in the cab with the Crane Operator, observing the Crane Operator operate the various controls,

and the trainee taking the controls under the supervision of the Crane Operator during slack periods of work operation. The training which the trainee receives is highly variable. Some trainees need very little training, others require relatively more. The amount of actual practice which the trainee receives is also highly variable, depending on how helpful the Crane Operator is and the demand or use of the crane during the training period. Williams received six (6) hours or less of actual practice on the crane prior to her examination. The Employer ha a policy that all persons failing the test initially have the opportunity to brush up on their weak points and to be retested. The additional training is not formal training, but rather "brushing up on weak points only" and then retesting. (Complainant's Exhibit 26).

8. At the conclusion of her Crane Operator's test on June 8, 1973, Williams' examiner, George Paulsen, signed her test form, MW-945, which included a statement, *"Lois Williams is not at this time qualified to run a (sic) overhead crane needs more training".* (Complainant's Exhibit 11). Under Employer's policy and the strong implication of the written statement on her examination form, Williams was to receive more training for the Crane Operator's position.

9. At the conclusion of her Crane Operator's examination, Louis (Bud) Miller advised Williams that she had had enough Crane operator training and expressly or by implication that she would not be given further tests. (Record, 45). As noted above, eleven (11) out of eleven (11) males who took the Crane Operator's test for the E.T.L. crane during the calendar year 1973 passed the test and became Crane Operators. Four (4) out of the eleven (11) failed the first test and at least three (3) of the four (4) retested and passed the test the week immediately following their failure. Therefore, based upon her sex, Williams was intentionally denied the opportunity to take further training and testing for such job by the Employer.

10. While working as a Feeder-Helper William was not notified in writing nor officially disciplined in any manner because of inadequate work performance, poor workmanship, or safety violations. On March 15, 1973, Williams was removed from the job of Feeder-Helper by her General Foreman, Louis (Bud) Miller. Male

Feeder-Helpers have been warned in writing of unsatisfactory or poor work performance and were not removed from the line. (Complaint's Exhibit 10 and testimony).

11. On November 16, 1973, Williams, who was upset, stated to personnel clerk, Noreen McClendon, just before Williams talked to Edward Lewis, *"My feet hurt and I am going to have to quit".* (Record, 505). Williams Termination Interview form states reasons given by employee for termination, "Quit – cannot work because of sore feet". (Complainant's Exhibit 14).

12. The Employer is responsible for assuring that its foremen and other managers provide equal employment to laborers without regard to sex. In 1973 Employer had very few women working in non-management labor positions, practically none in skilled positions and on the production lines. In 1973 Employer, through its various foremen, discriminated against females by the use of harassment, allowing women less freedom that men in break times and by making it more difficult to receive adequate training for job promotions.

13. The operation of the crane is an easy physical job. The crane is operated by electrical controls governed by levers operated by use of the hands. The operator may either sit or stand. (Record, 597-9). No evidence was presented that Complainant was physically or intellectually incapable of learning to operate the crane. The Commission takes official notice that women are neither physically or intellectually inferior to men in jobs which require relatively light physical effort. Because eleven (11) out of eleven men who took the Crane Operator's test in 1973 passed such test, it is very probable that Williams would have passed had she been given the opportunity for further training and an additional test. Williams wanted the Crane Operator's job and wishes to go back to the company as a Crane Operator. (Record, 958-9).

14. The laborer's job, at which Williams was working during her last week of employment, requires substantial walking and standing. Williams left employment because her feet hurt. If Williams had been granted the Crane Operator's job she would not have been required to walk and stand for long periods of time. It is more likely than not that Williams' feet would not have hurt

in the Crane Operator's job an, therefore, she would not have left her employment. The Commission concludes that "but for" Midwest's act of sex discrimination, Williams would not have left her employment.

15. After leaving her employment with Midwest, Williams made efforts to find other work, but only had limited success. Williams had additional operations on her feet in 1974 and 1975 during which times she was temporarily disabled (Record, 101 and following).

16. Any conclusion of law which should have been deemed a Finding of Fact is hereby adopted as such.

## CONCLUSIONS OF LAW

1. An employer is bound to provide equal opportunity without regard to sex which includes that chance to use equal skill, efforts responsibility, and job performance under similar working conditions, including equal opportunity for training and testing for promotions, as well as equal pay for the same job. Midwest is bound to provide such equal opportunity without regard to sex by reason of statute including the Indiana Civil Rights Law, agreement between management and union, and consent decrees in evidence to which Midwest is a party.

2. The burden of proof is upon the Complainant to prove sex discrimination by substantial, reliable, and probative evidence, meaning that she must prove that it is more likely than not that she was in fact discrimination against by reason of her sex.

3. Under the Indiana Civil Rights Law one of the avowed or express purposes of the act, IC, 1971, 22-9-1-2 is to provide to all citizens of Indiana equal opportunity in employment. Thereunder, the practice of denying equal employment opportunity on the basis of sex is considered a discriminatory practice, and the act shall be construed broadly to effectuate its purpose. Under IC 22-9-1-3(p) the "sex" as it applies to segregation referred to in the act, applies all types of employment.

4. Williams was discriminated against on the basis of her sex with regard to her training and testing as a Crane Operator specifically as follows:
   a. She was denied opportunity for additional training in violation of an employer policy which was applied to males which allowed them to "brush up on weak points".
   b. She was effectively denied the opportunity to retest by statements of Louis (Bud) Miller in violation of an Employer policy which was applied to males allowing them "the opportunity to brush up on their weak points and be retested".
5. Williams is entitled to relief in the form of back pay wages, from the date of the discriminatory act on June 8, 1973, to the date of the Commission's decision herein.
6. The Complainant timely filed her complaint with the Commission.
7. The Hearing Officer's Recommendation relied on an interpretation of IC 22-9-1-6(k) (1) that the Commission's power in employment cases is limited to awarding "wages, salary, or commissions". The material portion of that subsection reads as follows:

> …if the commission finds a person has engaged in an unlawful discriminatory practice, it may cause to be served on such person an order requiring such person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power to restore Complainant's losses incurred as a result of discriminatory treatment, as the Commission may deem necessary to insure justice, Provided, however, that this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commission;
> …IC 22-9-1-6(k) (1) (emphasis added

Obviously, the General Assembly has imposed some limitation by the emphasized portion of section 6(k) (1). The crucial question is what provision is meant by the words "this specific provision". The use of the "specific" rather clearly implies

something different from a general provision and the use of the word "provision" implies something less than the subsection. Thus the limitation applies to a specific part of subsection 6(k) (1). The commission concludes that the specific part is "the power to restore Complainant's losses incurred as a result of the discriminatory treatment" and therefore that the limitation relates to the kinds of monetary awards that can be made in employment cases. Under this interpretation, the Commission can order the Respondent to take affirmative action to effectuate the purposes of the Civil Rights Law, which affirmative action can include reinstatement with retroactive seniority.

8. Williams having completed her probationary period, cannot complete on her own behalf about probationary discharges or denial of transfers to probationary employees. Therefore with respect to those allegations, she is not a "complainant" under IC 22-9-1-3(n). Since a complaint is a "written grievance filed by a complainant", IC 22-9-1-3(o) and since "[t]he commission shall not hold hearings in the absence of a complaint", IC 22-9-1-6(e), the commission has no jurisdiction over such allegations.
9. There is insufficient evidence to support a claim that Midwest assigned Williams duties in a sexually discriminatory manner.
10. There is insufficient evidence supporting a claim that Midwest discriminated against Williams because of sex with respect to break periods.
11. Assuming arguendo that Williams; waiver of her competitive seniority was coerced because of sex, such coercion caused no harm, as she was allowed to withdraw the waiver upon her first request.
12. There is insufficient evidence supporting a claim that Midwest discriminated against Williams because of sex by retaliating against her for asserting contractual and statutory rights.
13. It is apparent that the Complainant believed that the phrase in the complaint *"I believe this is part of a patter (sic) of treatment of women at MWS"* authorized the litigation of a variety of allegations of discrimination against persons other than herself. This belief is incorrect the only persons authorized by the statute to complain on behalf of others are the Director and Deputy Director. IC 22-9-1-3(n).

14. Midwest is subject to Executive Order 11246 and the various regulations thereunder and is thus already required to undertake affirmative action to eliminate sex discrimination.
15. It would be unjust to impose additional affirmative action obligations on Midwest.
16. Any finding of fact which should have been deemed a conclusion of law is hereby adopted as such.

## ORDER

1. Respondent shall immediately offer to the Complainant a position as a Crane Operator. Respondent shall credit Complainant with seniority as if her employment with Midwest had been uninterrupted. Respondent may require Complainant to successfully complete the training for said position before performing as a Crane Operator. Should Complainant refuse this offer, Respondent shall have no obligation to hire her that results from this Order.
2. Respondent shall cease and desist from providing less training for females than for males in preparation for meeting its requirement for holding any particular job.
3. The case is remanded to the Hearing Officer to determine the monetary loss Complainant "incurred as a result of discriminatory treatment", see IC 22-9-1-6(k)(1). The Hearing Officer's recitation of the manner of calculating this loss is essentially correct. However, it should be noted that any loss attributable to failure on Complainant's part to take reasonable steps to secure employment are not losses "incurred as a result of discriminatory treatment" an are thus not compensable. The burden of proof on that issue rests with Respondent.

**Dated: January 20, 1978**

**Affirmed:** *Indiana Civil Rights Commission v. Midwest Steel Division of National Steel Corporation* , 450 N.E. 2d 130 (Ind. App. 1983).